the arbitration award was bad. They say that under the arbitration clause in the charterparty they had to nominate an arbitrator and as they had not so nominated one they did not submit to arbitration. They further say that though they had agreed that any arbitration under the charterparty should take place in London they had not agreed that the law of England would apply to such arbitration. Therefore the appointment of Mr. Ralph E. Kingsley as sole arbitrator under the provisions of section 7(b) of the English Arbitration Act, 1950 when the defendants failed to nominate an arbitrator was not in accordance with the terms of the charterparty and the arbitration award was bad.

I am unable to agree with this submission of the defendants. Here the parties had agreed by the said clause 50 of the charterparty that any disputes between them arising from the dealings on the charterparty shall be referred to arbitration in London. The said clause 50 is silent as to what law shall govern such arbitration proceedings. Moreover it is also silent on what should take place in the event of one of the parties failing to nominate an arbitrator when called upon to do so by the other party to deal with a dispute. In such circumstances as the parties had agreed that the arbitration should take place in London, in the absence of any specific provisions to the contrary in the charterparty the law of England should apply to such arbitration proceedings. Besides the provisions of section 7(b) of the English Arbitration Act, 1950 are *in pari materia* with section 9(1)(b) of the Singapore Arbitration Ordinance. In these circumstances I find that the arbitration was conducted in accordance with the agreement and the award here was made pursuant to provisions of the said agreement and therefore the award here is a good one.

The defendants also took up various other objections of a procedural character against the institution of the action in its present form but having considered them I am of the opinion there is no substance in any of these objections.

In the event I allowed the plaintiffs' application and granted them leave to sign final judgment for the amount of their full claim with costs.

Application allowed.

Solicitors: *Drew & Napier; Rodyk & Davidson.*

FAR EASTERN BANK LTD. v. BEE HONG FINANCE CO. LTD.

[C.A. (Wee Chong Jin C.J., Tan Ah Tah & Choor Singh JJ.) May 18, 1971]

[Singapore — Civil Appeal No. 43 of 1970]

Banking — "A/C payee" cheque — Collecting bank — Duty of care.

Bills of exchange — Cheque marked "A/C payee only" — Payment by collecting bank to person with no account — Whether bank negligent.

Moneylenders — Loan — Share certificates as security.

Tort — Conversion — Cheque — Right to sue.

Damages — Negligent banker — Quantum.

The defendant/appellant and the plaintiff/respondent are companies incorporated in Singapore. The appellant carries on the business of banking in Singapore whereas the respondent's business is one of licenced moneylenders.

On January 17, 1969, the respondent issued a cheque marked "A/C payee only" for $10,000 in favour of Lee Lam. This sum constituted a loan on the security of 7 share certificates which were subsequently discovered to be forgeries. Immediately after receiving the cheque, Lee Lam proceeded to the appellant bank, accompanied by one Aw Yong San, a customer of the appellant bank. The cheque was presented to the bank's sub-accountant who was persuaded to mark the cheque for payment despite the fact that Lee Lam had no account with the appellant bank. The sum of $10,000 was credited to the account of Aw Yong San with the appellant bank. Immediately thereafter, $9,800 was cashed by Lee Lam on a cheque issued to him by Aw Yong San on Aw Yong San's account.

The plaintiff/respondent asked for a declaration that there was negligence on the part of the defendant/appellant's bank in collecting the cheque for its customer, Aw Yong San, and damages for conversion of the cheque, or alternatively $10,000 for money had and received.

The sole question for determination, therefore, was whether the action by the sub-accountant of the appellant bank, in negotiating an "A/C payee only" cheque for a payee who had no account with his bank, showed negligence on the part of the collecting bank.

The learned trial judge held the appellant bank liable, as the sub-accountant acted with deliberation and went out of his way to oblige two total strangers in circumstances when it must have been quite clear to him that he and the bank were on peril when asked to act as collectors of the cheque. His lordship was also of the view that the true owner of the cheque all along was the plaintiff/respondent. Lee Lam never became the true owner by virtue of the fact that he was responsible for the fraud on the plaintiff. In the circumstances, his lordship held that the appellant bank had not discharged its onus of showing lack of negligence.

The defendant/appellant appealed.

Held, allowing the appeal: (1) the respondent had no title to sue under the common law in conversion;

(2) on the facts it was clear beyond doubt that the bank had not acted in any way which could be said to be not without negligence, as the bank made all the enquiries which any bank could reasonably be expected to make.

Case referred to:-

(1) *House Property Co. of London Ltd.* v. *London County and Westminster Bank* (1915) 84 L.J.K.B. 1846.

COURT OF APPEAL.

T. C. Cheng for the appellant.

M. Karthigesu for the respondent.

In the court below *Edward Loke* appeared for the plaintiff and *Miss Patricia Low* for the defendant. The following grounds of decision was given on January 29, 1971:

Winslow J.: The plaintiff and the defendant are companies incorporated in Singapore, the former carrying on business as licenced moneylenders whereas the latter carries on business in banking in Singapore.

On 17th January, 1969 the plaintiff through its managing director, P.W. 1, Ng Chwee Cheng, issued cheque No. GLA 109485 chopped "A/c payee only" for $10,000 in favour of Lee Lam as a loan on the security of 7 share certificates of the face value of

$1,000 each. These, he had ascertained, were really worth around $15,000. There is no dispute that these certificates were subsequently discovered to be forgeries.

Immediately after receiving the cheque, Lee Lam proceeded to the defendant bank accompanied by Aw Yong San (also known as Au Eng San) where the cheque was presented to the bank's sub-accountant, D.W. 1, Ang Kah Soon, who was in charge of the clearing department. Both Lee Lam and Aw Yong San were total strangers to this officer of the bank. Between them they prevailed on him to have that cheque marked for payment by the paying bank and the sum of $10,000 was credited to the account of Aw Yong San with the defendant bank.

Shortly afterwards $9,800 was cashed by Lee Lam on a cheque issued to him by Aw Yong San on Aw Yong San's account. Both these gentlemen have disappeared and it is understood that the police are still looking for them. It is noteworthy that Lee Lam had no account with the defendant bank.

The plaintiff accordingly asked for a declaration that there was negligence on the part of the defendant bank in collecting the cheque for its customer, Aw Yong San, and damages for conversion of the cheque or alternatively $10,000 for money had and received.

The sole question for determination is whether the action taken by D.W. 1, Ang Kah Soon, the sub-accountant of the defendant bank, showed negligence on the part of the collecting bank.

The facts are not in dispute and I do not have the slightest doubt that a fraud was committed on the drawer, the plaintiff, by Lee Lam and Aw Yong San. In the first place the fact that nearly the whole of the $10,000 was cashed shortly afterwards and the fact that both these gentlemen have disappeared speak for themselves. It is perhaps unfortunate that D.W. 1, Ang Kah Soon, allowed himself to become involved in cashing the said cheque in this extraordinary manner. As he himself admitted, this was the first time in his career of 10 years with the defendant bank that he had ever done this kind of thing, *i.e.*, negotiating an "A/c payee only" cheque for a payee who had no account with his bank.

Counsel for the defendant submitted that the defendant bank owed no duty of care to the plaintiff at all, the only duty of care owed being to Lee Lam and nobody else as he was the true owner. I am unable to accept this proposition. Lee Lam did not have an account with the defendant bank. He was not their customer, he was a complete stranger. Their customer was Aw Yong San, who was neither the payee nor the true owner.

I accepted the submissions on the law by counsel for the plaintiff and rejected those by counsel for the defendant. The authorities cited by counsel for the defendant appeared to me to be irrelevant and I considered that section 4 of the Cheques Act had no relevance at all. Quite apart from any consideration of the fraud allegedly committed by Lee Lam and Aw Yong San on the plaintiff and the extent to which the collecting bank should have been on guard against any such fraud, it seems quite clear from the following passage in *Paget's* Law of Banking, 7th edition at pages 395/396 that the law is against the defendant. According to the passage under reference under the head "Account Payee" *Paget* says:

> "Conclusive evidence of negligence in the collecting banker is to take a cheque crossed with the words 'account payee', or 'account so and so', for an account other than that indicated. This has even been held to apply where the cheque was payable to a specified payee or bearer. The only exception hitherto recognised is where the customer was a foreign bank, and 'account payee' or even, as in the *Importers Co.* case, 'account payee only', referred to the foreign bank's customer, as to whom it was obviously impossible for the English bank to know or find out anything. It is difficult to write with reticence about this unauthorised addition to cheques. As shown before, these words have no effect in limiting the transferability or full negotiability of an order or bearer cheque. It has hardly even been suggested that they have. If put on by anyone except the drawer they cannot be treated as any part of his mandate, because there is no statutory enactment enabling the holder to exercise deputed power in this respect, as there is in the case of a regular crossing or the words 'not negotiable' added to one. Besides, the mandate, direct or imputed, is only efficacious as between the drawer and his own, that is, the paying banker. The effect accorded them as against the collecting banker cannot be ascribed to the non-contractual care for the true owner's interests, because they have no statutory sanction and connote no commensurate protection. Were the matter one of first impression, it might well be argued that any banker, being confronted with an absolutely contradictory and ambiguous document, one which on the face of it purports to be payable to order or bearer and at the same time indicates that it and its proceeds are to be devoted to a specified individual, was entitled to regard it in its true legal aspect, namely, as a negotiable instrument, available in anyone's hands, on which the superadded words were purely nugatory; and that, acting on this legitimate construction, he could not be taxed with negligence. Reasonable as this view is, it cannot be accepted. The practice has been tolerated so long and recognised to such an extent both by judges and bankers, that it would be absolutely hopeless for any collecting banker to set up that these words conveyed no meaning to him or that he was justified in ignoring their existence on a crossed cheque..."

I accept the proposition set out in the cases cited by *Paget* on pages 395/396 *et seq.* In particular, counsel for the plaintiff cited the case of *House Property Co. of London, Ltd.* v. *London County and Westminster Bank.*[1] Although counsel for the defendant submitted that a crossed cheque of this kind was nevertheless negotiable that does not conclude the matter even if she was right. In the light of the passage to which I have already referred and the cases cited by *Paget*, including the *House Property Co. of London Ltd.* case, I also considered the Malayan cases dealing with "Account payee only" cheques and I found nothing in them which supported the defendant. I also considered the cases which deal with the standard of experience and care which can be expected of employees of a bank such as D.W. 1, Ang Kah Soon. This officer has been with the defendant bank for 10 years. He is a sub-accountant in charge of the clearing department. There was no question of his not being possessed of that degree of intelligence and knowledge required of a person in his position to fit him for the discharge of his duties nor can it be said that the pressure of business was such that what he did in relation to this cheque was an oversight or a slight slip. He acted with deliberation and went out of his way

to oblige two total strangers in circumstances when it must have been quite clear to him that he and the bank were on peril when asked to act as collectors of the cheque.

I also considered whether there is any substance in the arguments put forward by counsel for the defendant to the effect that section 4 of Cheques Act or its equivalent is of assistance to the defendant bank. I was completely satisfied that any argument based on such a proposition was irrelevant if not absurd. In my view the true owner of the cheque all along was the plaintiff. Lee Lam never became the true owner by virtue of the fact that he was responsible for the fraud on the plaintiff. He was not the guileless holder in due course nor for that matter was Aw Yong San. In my judgment the defendant bank had not discharged its onus of showing lack of negligence.

In conclusion this was a clear case for the plaintiff and I delivered judgment accordingly with costs.

The defendant bank appealed to the Court of Appeal.

Wee Chong Jin C.J. (delivering oral judgment of the court): If necessary we will give our full reasons for allowing the appeal but as I said on the authority cited to us at page 334 of *Paget* the respondent had no title to sue under the common law in conversion. On his alternative cause of action that the bank, although it acted in good faith, had acted not without negligence and therefore was liable to the respondent who claimed as true owner, on the facts it is clear beyond doubt and unfortunately the trial judge did not consider that aspect of the case at all, that the bank had not acted in any way which could be said to be not without negligence that is to say the bank made all the enquiries which any bank could be reasonably expected to make and that being so the alternative cause of action must also fail. We therefore allow the appeal and set aside the judgment of the trial judge and dismiss the plaintiff's claim with costs here and in the court below.

Appeal allowed.

Solicitors: *Cheng & Co.; Allen & Gledhill.*

MALAYSIAN REPORTS

ANANDARAJAN & ORS. v. MAHADEVAN

[F.C. (Suffian Ag. L.P., Gill & Ali F.JJ.) February 12, 1971]

[Kuala Lumpur — Federal Court Civil Appeal No. X. 95 of 1969]

Education — School discipline — Expulsion of student for misconduct — Maintenance of discipline — No elaborate inquiry expected — Education (School Discipline) Regulations 1959, reg. 8.

Administrative Law — Expulsion of student from school for misconduct — No elaborate inquiry expected — Audi alteram partem principle applied upon most general considerations.

This was an appeal from a judgment of the High Court ([1970] 1 M.L.J. 50) whereby it was declared that the expulsion of the respondent/plaintiff by the first appellant/defendant, was null and void, and an order made for his reinstatement.

The respondent, an infant, claimed: (a) at no time was he or his father made aware of any charges or accusations or allegations of misconduct against him; (b) neither he nor his father was given an opportunity to answer any charges or accusations against him; (c) no reasons were given for his expulsion from the school; (d) in expelling him from the school the first defendant had acted maliciously, capriciously, wrongfully and without any lawful reasons; and (e) both the head teacher and the Board of Governors acted unlawfully and in breach of the rules of natural justice.

The learned trial judge, on being satisfied that the respondent was not given an opportunity to be heard, concluded that there had been a breach of natural justice.

The question before the court, *inter alia,* involved the interpretation of regulation 8 of the Education (School Discipline) Regulations, 1959 which provides: "Whenever it appears to the satisfaction of the head teacher of any school — (a) to be necessary or desirable for the purpose of maintaining discipline or order in any school that any pupil should be suspended or expelled . . . he may by order expel him from such school."

Held, allowing the appeal (Ali F.J. dissenting): (1) regulation 8, which invested the first appellant/defendant with a quasi-judicial function, prescribed no special form of procedure, but it was for him to determine the procedure to be followed as he thought best, subject to the implication that some form of inquiry was to be held in accordance with the rules of natural justice;

(2) for the maintenance of discipline and order in any school, a head teacher cannot be expected to hold an elaborate inquiry before making an order. Therefore, a school comes under the category of that vast area where the principle of *audi alteram partem* can only be applied upon most general considerations;

(3) there was ample evidence to show that the first appellant/defendant acted justly and reached just ends by just means in making the order of expulsion against the plaintiff.

[Editorial Note: The Federal Court on July 7, 1971, granted leave to the respondent to appeal to the Privy Council.]

Cases referred to:-

(1) *Ramesh Chandra Sahu* v. *N. Padhy, Principal, Khallikete College, Berhampur* A.I.R. 1959 Orissa 196.

(2) *University of Ceylon* v. *Fernando* [1960] 1 All E.R. 631, 637.

(3) *Byrne* v. *Kinematograph Renters Society, Ltd.* [1958] 2 All E.R. 579, 599.